



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-ES-2021-0151; FF09420000 / 223 / FXES111609M0000; OMB

Control Number 1018-New]

Agency Information Collection Activities; Approval Procedures for Incidental Harassment Authorizations of Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without an Office of Management and Budget control number.

DATES: Interested persons are invited to submit comments on or before

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference “1018-IHA” in the subject line of your comments):

- Internet (preferred): <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-HQ-ES-2021-0151.
- Email: Info_Coll@fws.gov.
- U.S. mail: Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection

Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographic region for periods of not more than 1 year. The Service may authorize incidental take by harassment if statutory and regulatory procedures are followed and the Service finds: (i) take is of a small number of marine mammals of a species or stock, (ii) take will have a negligible impact on the species or stock, and (iii) take will not have an unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses by Alaska Natives.

The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill, any marine mammal. Harassment means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as “Level A

harassment”), or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as “Level B harassment”).

The terms “negligible impact,” “small numbers,” and “unmitigable adverse impact” are defined in 50 CFR 18.27 (i.e., the Service’s regulations governing small takes of marine mammals incidental to specified activities). “Negligible impact” is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. “Unmitigable adverse impact” means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers” is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates “small numbers” with “negligible impacts.” We recognize “small numbers” and “negligible impact” as separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or

stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. The Service ensures the least practicable adverse impact through mitigation measures that are effective in reducing the impact of project activities but are not so restrictive as to make project activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, the Service issues an IHA, which may set forth the following: (i) Permissible methods of taking; (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting such take by harassment.

Applicants seeking to conduct activities may request an IHA for the specified activity. If the IHA is issued, the applicants must submit on-site monitoring reports and a final report of the activity to the Secretary.

This is a non-form collection. Applicants must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. These regulations provide the applicant with a detailed description of information the Service needs in order to evaluate the proposed activity and make the required determinations. Specifically, applicants must submit the following information to the Service as part of the IHA application process:

- A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals, and
- The dates and duration of such activity and the specific geographical region where it will occur.

- Based on the best available scientific information, each applicant must also:
 - Estimate the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions, and the type of taking (e.g., disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;
 - Describe the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;
 - Describe the anticipated impacts of an activity upon the species or stocks;
 - Discuss the anticipated impact of the activity on the availability of the species or stocks for subsistence uses;
- Discuss the anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat;
- Describe the anticipated impact of the loss or modification of the habitat on the marine mammal population involved;
- Describe availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;
- Discuss the suggested means of accomplishing the necessary

monitoring and reporting which will result in increased knowledge of the species through an analysis of the level of taking or impacts, and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and

- Suggest means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating their effects.

The Service uses the information to draft the proposed IHA, including proposed determinations and mitigation measures to ensure the least practicable adverse impacts on the species or stock and its habitat. Upon IHA issuance, applicants must submit monitoring and final reports indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specified activity. The purpose of monitoring requirements is to assess the effects of project activities on the species or stock, ensure that take is consistent with that anticipated in the negligible impact and subsistence use analyses, and detect any unanticipated effects on the species or stock. Because the length of project activities varies by project (a few weeks to a few months), some projects require weekly reports during project activities.

OMB previously approved information collection requirements associated with incidental take regulations (ITRs) and letters of authorization (LOAs) contained in 50 CFR 18, subparts J (Beaufort Sea) and K (Cook Inlet) under OMB Control Number 1018–0070. Because the ITRs and associated LOAs authorize specific entities to incidentally take marine mammals while engaged in specified activities within a specific geographic region for periods of not more than 5 years, the Service will request a separate OMB control number for

information collection requirements associated with IHAs.

Title of Collection: Approval Procedures for Incidental Harassment

Authorizations of Marine Mammals (50 CFR 18.27).

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Private sector and State/local/Tribal government.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average Number of Annual Respondents	Average Number of Responses Each	Average Number of Annual Responses	Average Completion Time per Response (Hours)	Estimated Annual Burden Hours
<i>Incidental Harassment Authorization – Application</i>					
Private Sector	4	1	4	50	200
Government	1	1	1	50	50
<i>Incidental Harassment Authorization – Monitoring and Observation Reports</i>					
Private Sector	4	12	48	1.5	72
Government	1	12	12	1.5	18
<i>Incidental Harassment Authorization – Final Report</i>					
Private Sector	4	1	4	5	20
Government	1	1	1	5	5
<i>Totals:</i>	<i>15</i>		<i>70</i>		<i>365</i>

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer,

U.S. Fish and Wildlife Service.

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